* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 12.3.2007
% Date of decision: April 18, 2007

\+ W.P.(C) 5498/2005

\# DR. K.K. SHRIVASTAVA ..... Petitioner
! Through Mr. Keshav Dayal, Senior Advocate with
Mr. Arun K. Beriwal & Mr. P. Dayal, Advocates

versus

$ DELHI DEVELOPMENT AUTHORITY ..... Respondents
^ Through Mr. Ajay Verma, Advocate

CORAM:
* **HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

:Dr. S.Muralidhar J.

1. The challenge in this writ petition is to a demand notice dated 28.2.2005 issued by the Respondent, Delhi Development Authority (`DDA') calling upon the Petitioner deposit a sum of Rs. 22,87,580 on account of “50 per cent of unearned increase” as demanded earlier by the DDA on 13.8.1996 together with 18 per cent interest from the date of issuance of the letter, as a pre-condition to mutate residential plot No. E-7, East of Kailash, New Delhi in favour of the Petitioner.

2. This case has a long history of litigation. The Petitioner was the family doctor of Shri Jaswant Singh who on 19.6.1983 executed a

composite Will bequeathing all but one of his properties to his family members. The residential property at E-7, East of Kailash, New Delhi was bequeathed in favour of the Petitioner. On the basis of this Will, the Petitioner approached to the Court of District Judge in 1984 for grant of Letters of Administration. The heirs of Late Shri Jaswant Singh informed the Court that they had no objection to the property in question being transferred to the Petitioner.

3. After Letters of Administration were granted in favour of the Petitioner by the District Court, Delhi by judgment dated 7.12.1984, the Petitioner applied to the DDA for mutation of the property in his name. Reminders were sent on 8.8.1987 and 21.12.1987.

4. On 26.7.1988, the DDA formulated a policy and guidelines for mutation of plots in cases where a request was received for transfer of property on the basis of a Will to a person who was not a blood relation of the testator. Pursuant to this policy, a letter dated 14.10.1988 was sent by the DDA to the Petitioner requiring him to furnish various documents including certified copy of the Will, death certificate in original, no objection of the legal heirs, an undertaking, Indemnity bond etc. Another letter dated 21/25.11.1988 was issued by the DDA making a similar request.

5. On 22.12.1988 the Petitioner furnished these documents.

More correspondence followed with the DDA asking for some more documents, which the Petitioner states he furnished. When the mutation still did not take place, the Petitioner made further representations and on 3.2.1993 received a letter from Deputy Director (LA) asking him to submit an undertaking to the effect that no monetary consideration was involved in the execution of the Will and that the property had not passed on to the Petitioner during the lifetime of the testator. The Petitioner states that this undertaking was also forwarded by him to the DDA on 12.2.1993. On 13.8.1996 the DDA wrote to the Petitioner calling upon him to pay Rs. 22,87,850 towards unearned increase as a pre-condition to grant of mutation. The petitioner's request for reconsidering this demand was turned down by the DDA on 30.12.1996.

6. Relying upon the judgment of this court in ***Vijaya C. Gurshaney v. Delhi Development Authority*** 1994 II AD (Delhi) 770, the Petitioner filed Civil Writ Petition No. 1779 of 1997 in this Court seeking a mandamus to the DDA to mutate the plot in question in his favour. By an Order dated 4.3.1999 a learned Single Judge of this Court followed ***Vijaya C. Gurshaney v. DDA*** and allowed the writ petition with costs of Rs. 5000/-. The DDA filed an appeal, LPA No. 403/1999 before the Division Bench of this Court on 7.9.1999.

7. While the appeal was pending, the Hon'ble Supreme Court in

DDA v. Vijaya C. Gurshaney, by a judgment dated 26.8.2003 reported in (2003) 7 SCC 301, set aside the judgment of Division Bench of this Court and upheld the policy of the DDA demanding unearned increase of value of the land in cases where the property was left behind by way of a Will in favour of a person who was not the blood relation and where upon enquiry the DDA found that the "alleged Will is in actuality a sale in the garb of Will in total disregard of the policy-decision of the authority." It was further held that "merely because Probate/Letters of Administration are granted, would not preclude DDA from so inquiring."

8. Following the judgment of the Hon'ble Supreme Court in ***DDA v. Vijaya C. Gurshaney***, the Division Bench of this Court by judgment dated 12.1.2004 allowed DDA's appeal LPA No. 403/1999 with the direction that upon the petitioner furnishing the requisite information, the DDA should conduct afresh the inquiry within two months and to take a final decision in the matter. It was directed that the decision will be communicated to the Petitioner within two weeks thereafter.

9. On 28.1.2004, the Petitioner submitted the information to the DDA as directed by the Division Bench of this Court and reiterated his request for mutation of the property in his name. On 25.11.2004 the Petitioner was issued a letter requiring him to attend the Office of the

Commissioner (LD) on 2.12.2004 at 2.30 PM asking him to bring "Rent Receipts."

10. Thereafter it appears that on 29.12.2004 the Vice Chairman, DDA (`VC') passed an order taking a view that "unearned increase should be levied in this case." The copy of the order dated 29.12.2004, placed on the record of this Court by the DDA on 24.3.2006, reveals that the following factors weighed with the VC in coming to the aforesaid conclusion:

> "(i) Shri Srivastava has been able to produce only two receipts dated 14.7.74 and 5.7.76 for the periods 1.6.74 to 30.6.74 and 1.6.76 to 31.6.76 respectively.
>
> (ii) It is significant that a complaint (albeit anonymous) was made in 1973 (page 54/c) that an unauthorised sale transaction in respect of this property had taken place in favour of Shri Srivastava (the lessee on being asked about this had denied through an affidavit then (page 57/c).
>
> (iii) Shri Srivastava in his letter at pages 231-232/C has, inter alia stated that the lessee had family relations with him since before he came to Delhi and treated his wife, as his daughter and that he (Shri Srivastava) as a physician cardiologist served the lessee and his family because, of the relationship, and that when the lessee learnt about his (Dr. Srivastava's) accommodation problems, he insisted that he uses his (the lessee's) house free of rent, and it was only because he was adamant that he

agreed to take rent (two receipts of which have been produced).

(iv) In the Will (Page 366/c), the lessee had stated that he had great love and affection for his family doctor who had been taking care of him and his family for the last more than 20 years, and that he loves him like a younger brother. He makes no mention of any relationship prior to Shri Srivastava's coming to Delhi or any other relations such as treating his wife as a daughter, etc.

(v) The Will was signed one day before the death of the lessee, and registered later. This certainly appears strange considering that Shri Srivastava was living in the property of the lessee since the early seventies and it could be reasonably argued that the intent to "Will" the property in favour of Shri Srivastava should have been translated into a voluntary action much earlier rather than on the eve of his death.

All the points brought out above, in my view, point towards the preponderant probability that there was, in fact, a physical transfer of possession of the property in favour of Shri Srivastava during the lifetime of the lessee, and that this was in pursuance of a transaction."

11. Mr. Keshav Dayal, the learned senior counsel appearing for the Petitioner submits that the decision dated 29.12.2004 is based on conjectures and surmises and ignores the facts brought on record by the Petitioner. He submits that there was no basis at all for the Vice

Chairman to conclude that there was a physical transfer of possession of property by the testator in favour of the Petitioner herein during his lifetime for monetary consideration and that the Will was merely executed in furtherance of such transfer. He submits that the Vice Chairman has completely ignored the documents on record which includes a letter written on 27.3.1973 by Shri Jaswant Singh denying that he had transferred the plot in question and which reply has been accepted and case closed by the DDA.

12. Without prejudice to these contentions, Mr. Dayal submits that the demand notice for Rs. 22 lakhs does not give any details on the basis of which the figure has been arrived at. Relying on the judgment of this Court in ***Mrs. Neirah Bhargav v. Lt. Governor*** 1991 RLR (DB) (Note) 68 it is submitted that the DDA cannot take advantage of the delay in granting mutation and seek to levy interest at 18 per cent for the period of delay. Reliance is placed on ***Anup Kumar Tandon v. UOI*** 2003 V AD (Delhi) 525 to contend that the rate which was prevalent on the date of the application, i.e., in the year 1985 should be levied.

13. On behalf of the Respondents, Mr. Ajay Verma, learned counsel submits that the scope of judicial review in such matters is extremely limited. He seeks to place reliance on the judgments of the Hon'ble Supreme Court in ***Ekta Shakti Foundation v. GNCT***, 2006 (7)

SCALE 179 and ***Rae Bareli Khetriya Gramin Bank v. Bhola Nath Singh*** (1997) 3 SCC 657 to contend that judicial review is limited to correct the errors of law or procedural errors leading to manifest injustice. He submits that when, on an overall assessment of the information, the VC has given a reasoned order in support of his conclusion, that decision should not be interfered with lightly by this Court.

14. The policy of demanding unearned increase in respect of properties which have sought to be transferred by way of a Will in favour of non-blood relations of the testator, was apparently devised by the DDA to curb fraudulent transfers. The rationale behind such a policy has been explained by the Hon'ble Supreme Court in para 10 of the judgment in ***DDA v. Vijaya C. Gurshaney*** which read as under:

> "10. The rationale behind the formulation of its policies and guidelines issued by DDA is to curb illegal transactions in favour of persons not of blood relations of the allottee, being practiced rampantly and the property being transferred by an underhand sale in the garb of Will and power of attorney etc. DDA has formulated a policy that in such cases the department would ask for 50% of unearned increase in the value of property. It is always open to appellants to inquire whether an alleged Will is in actuality a sale in the garb of Will in total disregard of the policy-decision of the authority. Merely because Probate/Letters of Administration are granted would not preclude DDA from so inquiring. It must be grasped that

> DDA has been given no notice of the testamentary proceedings. Therefore, it would have no right to appear or oppose such proceedings. As already said, DDA is a creature of the Statute and any policy-decision or guidelines formulated by such authority will have a binding effect on the parties, in absence of rules to the contrary."

Nevertheless in the same judgment, the Hon'ble Supreme Court in para 11 observed as under:

> "11. Furthermore, clauses 4, 5 and 8 of the lease deed, as extracted, envisage that the lessee cannot sell, transfer or part with the possession of the whole or any part of the commercial plot except with the previous consent of the lessor in writing, with a rider that the lessor can refuse the transfer. It is also provided in proviso to clause 4 (b) that in the event of sale or foreclosure of the mortgaged or charged property, the lessor shall be entitled to claim and recover the 50% of the unearned increase in the value of the plot. It is further provided in clause 8 that in the event title of lessee in the plot is transferred in any manner whatsoever the transferor and the transferee shall within three months of the transfer give notice of such transfer in writing to the lessor. The respondent herein has not complied with any of the conditions stipulated in the lease agreement and, therefore, it was within the competence of DDA to invoke the terms and conditions stipulated in the lease agreement by charging 50% of unearned increase in the value of

> the plot. The letters dated 19-6-1992 and 17-9-1992, impugned in the Writ Petition before the High Court, were in the terms of invoking of clauses 4, 5 and 8 of the lease agreement and policy-decision and guidelines of DDA as noticed above. The impugned judgment and order of the High Court runs contrary to the terms and conditions stipulated in the lease agreement and the same is unsustainable. It is accordingly set aside."

15. While the scope of judicial review in the present proceedings would have to be consistent with what has been explained by the Hon'ble Supreme Court in the judgments relied upon by the counsel for the DDA, nevertheless given the history of this litigation and the fact that the present inquiry was asked to be undertaken by the DDA pursuant to the directions of the Division Bench of this Court, it becomes incumbent to examine if indeed the decision has been arrived at after taking into account all available and relevant materials.

16. The decision of the Hon'ble Supreme Court in ***DDA v. Vijaya C. Gurshaney*** envisages that the DDA should conduct an inquiry to satisfy itself whether the device of the Will is being used to cloak a fraudulent transfer in favour of a non-blood relation. That 'enquiry' would involve four stages: the gathering of facts, the analysis of those facts, affording the person affected an opportunity of being heard and

then giving a reasoned decision, which of course should be communicated to the person concerned. The Court must be satisfied that all the facts gathered and available on record are indeed, have been considered and analysed, and that the decision reflects the application of mind of the decision-maker to those facts.

17. During the pendency of these proceedings, on 25.10.2005, this Court passed an order requiring the Petitioner to file an additional affidavit on the following aspects :

> "1. The date from which the petitioner came in possession of the writ property.
> 2. Whether the petitioner was paying house tax in respect of property if he has w.e.f. what date?
> 3. In whose name water and electricity connection was obtained in respect of the property.
> 4. Whether the petitioner was filing income tax returns and whether the writ property was shown therein as his property."

18. Pursuant to the above order, the Petitioner filed an additional affidavit on 30.11.2005 in which he disclosed that:

(a) He has been staying in the property since 1973 as a tenant. He also referred to the earlier affidavit dated 19.12.1988 and undertaking dated 11.2.1993 to the DDA, affirming that no monetary transaction took place and that the ownership of the property

did not pass on to the Petitioner during the lifetime of Shri Jaswant Singh.

(b) The property tax was paid by Shri Jaswant Singh till 1981-82. After his demise, the name of the Petitioner was mutated in the records of the MCD by Order dated 22.12.1987 and house tax is being paid since then by the Petitioner.

(c) The electricity connection was changed in the name of the Petitioner with effect from 28.5.1993.

(d) The water connection was changed in his name with effect from 16.12.1994.

(e) In the income-tax returns filed by Shri Jaswant Singh up to the year 1982-83, the property was shown as belonging to Shri Jaswant Singh. After that in the income-tax returns of the year 1984-85, the property was shown as belonging to the Petitioner.

19. This Court obviously considered the eliciting of the above information as essential to the enquiry that was required to be undertaken. Some of this information was already available on record in the form of letters/documents and undertakings. If the DDA so desired, it could have also sought such information. It also appears that the Petitioner was asked to bring the rent receipts by the order

dated 29.12.2004 of the VC, DDA. In an additional affidavit dated 10.5.2006 the Petitioner has placed on record photocopies of all the rent receipts from April 1973 to July 1976, and photocopies of the pass book of his saving account from 1973 to 1984 (except for the year 1978) showing the payment of rent. The Petitioner states in this additional affidavit that he in fact carried these documents and showed it to the Commissioner on 2.12.2004. There is no denial of this affidavit by the DDA. Suffice to say, all of this information would constitute materials relevant to the enquiry required to be undertaken by the DDA in terms of the order of this Court.

20. It is in the above background, that the reasons given by the VC in his order 29.12.2004 requires to be examined. The first reason given by the VC concerns the relationship between the Petitioner and the testator. Here the VC has observed that the Will of the testator states that he had great love and affection for the Petitioner but "makes no mention of any relationship prior to Shri Shrivastava's coming to Delhi.....". As far as this is concerned, one cannot possibly question of motives in bequeathing a particular property to a beneficiary. The tenor of the reasons given by the VC indicates that it is based only on surmises and conjectures.

21. The other point that the VC makes is that the Will was signed one day before the death of the testator. Where there is a Letters of

Administration granted by a Civil Court, unless something concrete is shown to doubt the genuineness of the Will, the judgment of the Civil Court accepting the veracity of such Will should be respected. It would be impermissible to simply conclude to the contrary without any concrete material. The VC does not refer to any material that has been brought to his notice that can persuade him to conclude that the Will was not genuine. The fact that it was executed one day prior to the death of testator, cannot by itself make the Will a fraudulent one. That would be too dangerous a proposition to advance and sustain. When the Hon'ble Supreme Court observed that the mere existence of a Letters of Administration would not preclude the DDA from conducting an independent inquiry into the genuineness of a Will, it was surely not intended to mean that even without making any such inquiry, on the basis of its own surmises and conjectures, the DDA can ignore the judgment of a Civil Court and conclude that a certain Will in respect of which Letters of Administration has been granted, is not a genuine one. There is no indication at all as to what were the facts gathered by the DDA in its inquiry which could have persuaded it to conclude to the contrary.

22. The third aspect is the rent receipts furnished by the DDA. The VC says that only two rent receipts were produced whereas the Petitioner states in his additional affidavit that several rent receipts were shown to the DDA at the time of hearing and that they did not

seek copies of the same after perusing the receipts. As already noticed this additional affidavit has not been denied by the DDA. In any event when numerous undertakings and affidavits have already been filed by the Petitioner stating that there was no monetary consideration involved in the transaction of the Will, and that the property was not transferred to the Petitioner during the lifetime of the testator, it would be difficult for the DDA to simply ignore these affidavits and undertakings reiterating that fact there was no transfer of the property for monetary consideration during the lifetime of the testator. The fact of mutation having been granted by the MCD, the income-tax returns showing the property as belonging to the testator till his demise, are all additional factors that support the case of the Petitioner but have not been considered by the VC.

23. The policy of the DDA has no doubt been devised to guard against fraudulent transfers that take place in favour of non-blood relations in the garb of a Will. But if the DDA wants to apply that policy, it will have to make an effort to actually come to a conclusion that the Will produced before it is in fact cloaks "a sale in the garb of Will in total disregard of a transaction of transfer". Such conclusion would be a pre-requisite for demanding unearned increase in respect of a property.

24. In view of the above discussion, the inescapable conclusion is

that the DDA is not justified in declining the request of the Petitioner for mutation of the property in his name on the basis of the Letters of Administration granted in his favour by the Civil Court. The DDA was not justified in demanding unearned increase by coming to the conclusion that the transfer of the property in favour of the Petitioner took place either for monetary consideration or during the lifetime of the testator. The decision arrived is based on no evidence at all, and, in any event without considering all relevant materials. Therefore, it calls for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution.

25. In view of the conclusion reached, the question as to what should be the rate at which the unearned increase should be demanded or whether interest should be demanded, does not arise.

26. The writ petition is accordingly allowed. A direction is issued to the DDA to mutate the property in the name of the Petitioner within a period of four weeks from today and in any event not later than 20.5.2007. In addition, the DDA will also pay to the Petitioner costs of Rs.10,000 within the same period and in any event not later than 20.5.2007. With the above directions, the writ petition is allowed and the applications are disposed of.

Sd/
April 18, 2007 (S. Muralidhar)

ak Judge